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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737-2141-02]

RIN 0648-XC423

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2013 Bering Sea and Aleutian Islands Pollock, Atka Mackerel, and Pacific cod Total Allowable Catch Amounts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2013 total allowable catch (TAC) amounts for the Bering Sea and Aleutian Islands (BSAI) pollock, Atka mackerel, and Pacific cod fisheries. This action is necessary because NMFS has determined these TACs are incorrectly specified, and will ensure the BSAI pollock, Atka mackerel, and Pacific cod TACs are the appropriate amounts based on the best available scientific information. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), [INSERT DATE OF FILING IN THE FEDERAL REGISTER], until the effective date of the final 2013 and 2014 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the Federal Register.

Comments must be received at the following address no later than 4:30 p.m.,  
A.l.t., [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE  
FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by FDMS  
Docket Number NOAA-NMFS-2012-0253 by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0253](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0253), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.
- Fax: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907-586-7557.
- Hand delivery to the Federal Building: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9<sup>th</sup> Street, Room 420A, Juneau, AK.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS.

All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly

accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012) set the 2013 BSAI pollock TAC at 1,220,900 metric tons (mt), the 2013 BSAI Atka mackerel TAC at 42,083 mt, and the 2013 BSAI Pacific cod TAC at 262,900 mt. In December 2012, the North Pacific Fishery Management Council (Council) recommended a 2013 BSAI pollock TAC of 1,266,100 mt, which is more than the 1,220,900 mt TAC established by the final 2012 and 2013 harvest specifications for groundfish in the BSAI. The Council also recommended a 2013 BSAI Atka mackerel TAC of 25,920 mt, which is less than the 42,083 mt TAC established by the final 2012 and 2013 harvest specifications for groundfish in the BSAI. Furthermore, the Council recommended a 2013 BSAI Pacific cod TAC of 260,000 mt, which is less than the 262,900 mt TAC established by the final 2012 and 2013 harvest specifications for groundfish in the BSAI. The Council's recommended 2013 TACs, and the area and

seasonal apportionments, are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2012, which NMFS has determined is the best available scientific information for these fisheries.

Steller sea lions occur in the same location as the pollock, Atka mackerel, and Pacific cod fisheries and are listed as endangered under the Endangered Species Act (ESA). Pollock, Atka mackerel, and Pacific cod are a principal prey species for Steller sea lions in the BSAI. The seasonal apportionment of pollock, Atka mackerel, and Pacific cod harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. The regulations at § 679.20(a)(5) specify how the BS pollock TAC will be apportioned. The regulations at § 679.20(a)(7) specify how the BSAI Pacific cod TAC will be apportioned. The regulations at § 679.20(a)(8) specify how the BSAI Atka mackerel TAC will be apportioned.

In accordance with § 679.25(a)(1)(iii) , (a)(2)(i)(B), and (a)(2)(iv), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2012 SAFE report for this fishery, the current BSAI pollock, Atka mackerel, and Pacific cod TACs are incorrectly specified. Pursuant to § 679.25(a)(1)(iii), the Regional Administrator is adjusting the 2013 BSAI pollock TAC to 1,266,100 mt, the 2013 BSAI Atka mackerel TAC to 25,920 and the 2013 BSAI Pacific cod TAC to 260,000 mt. Therefore, Table 1 of the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012) is revised consistent with this adjustment.

Pursuant to § 679.20(a)(5)(i), Table 3 of the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012) and reallocation (77 FR 12214, February 29, 2012) is revised for the 2013 BSAI allocations of pollock TAC to the directed pollock fisheries and to the Community Development Quota (CDQ) directed fishing allowances consistent with this adjustment.

TABLE 3—FINAL 2012 AND 2013 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA)<sup>1</sup>

[Amounts are in metric tons]								
Area and sector	2012 Allocations	2012 A season <sup>1</sup>		2012 B season <sup>1</sup>	2013 Allocations	2013 A season <sup>1</sup>		2013 B season <sup>1</sup>
		A season DFA	SCA harvest limit <sup>2</sup>	B season DFA		A season DFA	SCA harvest limit <sup>2</sup>	B season DFA
Bering Sea subarea	1,212,400	n/a	n/a	n/a	1,247,000	n/a	n/a	n/a
CDQ DFA	121,900	48,760	34,132	73,140	124,700	49,880	34,916	74,820
ICA <sup>1</sup>	32,400	n/a	n/a	n/a	33,669	n/a	n/a	n/a
AFA Inshore	529,050	211,620	148,134	317,430	544,316	217,726	152,408	326,589
AFA Catcher/Processors <sup>3</sup>	423,240	169,296	118,507	253,944	435,452	174,181	121,927	261,271
Catch by C/Ps	387,265	154,906	n/a	232,359	398,439	159,376	n/a	239,063
Catch by CVs <sup>3</sup>	35,975	14,390	n/a	21,585	37,013	14,805	n/a	22,208
Unlisted C/P Limit <sup>4</sup>	2,116	846	n/a	1,270	2,177	871	n/a	1,306
AFA Motherships	105,810	42,324	29,627	63,486	108,863	43,545	30,482	65,318
Excessive Harvesting Limit <sup>5</sup>	185,168	n/a	n/a	n/a	190,510	n/a	n/a	n/a
Excessive Processing Limit <sup>6</sup>	317,430	n/a	n/a	n/a	326,589	n/a	n/a	n/a
Total Bering Sea DFA	1,058,100	423,240	296,268	634,860	1,088,631	435,452	304,817	653,179
Aleutian Islands subarea <sup>1</sup>	6,600	n/a	n/a	n/a	19,000	n/a	n/a	n/a
CDQ DFA	0	0	n/a	0	1,900	760	n/a	1,140
ICA	1,600	800	n/a	800	1,600	800	n/a	800
Aleut Corporation	5,000	15,500	n/a	0	15,500	15,500	n/a	0
Bogoslof District ICA <sup>7</sup>	150	n/a	n/a	n/a	150	n/a	n/a	n/a

<sup>1</sup>Pursuant to § 679.20(a)(5)(i)(A), the BS subarea pollock, after subtraction for the CDQ DFA (10 percent) and the ICA (3 percent), is allocated as a DFA as follows: inshore sector - 50 percent, catcher/processor sector (C/P) - 40 percent, and mothership sector - 10 percent. In the BS subarea, 40 percent of the DFA is allocated to the A season (January 20-June 10) and 60 percent of the DFA is allocated to the B season (June 10-November 1). Pursuant to § 679.20(a)(5)(iii)(B)(2)(i) and (ii), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

<sup>2</sup>In the BS subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If less than 28 percent of the annual DFA is taken inside the SCA before April 1, the remainder will be available to be taken inside the SCA after April 1.

<sup>3</sup>Pursuant to § 679.20(a)(5)(i)(A)(4), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

<sup>4</sup>Pursuant to § 679.20(a)(5)(i)(A)(4)(iii), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

<sup>5</sup>Pursuant to § 679.20(a)(5)(i)(A)(6), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

<sup>6</sup>Pursuant to § 679.20(a)(5)(i)(A)(7), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

<sup>7</sup>The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Pursuant to § 679.20(a)(8), Table 4 of the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012) and reallocation (77 FR 61300, October 9, 2012) is revised for the 2013 seasonal and spatial allowances, gear shares, CDQ reserve, incidental catch allowance, and Amendment 80 allocation of the BSAI Atka mackerel TAC.

TABLE 4—FINAL 2012 AND 2013 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector <sup>1</sup>	Season <sup>2,3,4</sup>	2012 allocation by area			2013 allocation by area		
		Eastern Aleutian District/Bering Sea	Central <sup>5</sup> Aleutian District	Western Aleutian District	Eastern Aleutian District/Bering Sea	Central <sup>5</sup> Aleutian District	Western Aleutian District
TAC	n/a	38,500	10,763	1,500	16,900	7,520	1,500
CDQ reserve	Total	4,120	1,152	161	1,808	805	161
	A	2,060	576	80	904	402	80
	Critical Habitat <sup>5</sup>	n/a	58	n/a	n/a	40	n/a
	B	2,060	576	80	904	402	80
	Critical Habitat <sup>5</sup>	n/a	58	n/a	n/a	40	n/a
ICA	Total	430	100	40	1,000	75	40
Jig <sup>6</sup>	Total	167	0	0	70	0	0
BSAI trawl limited access	Total	3,321	951	0	1,402	664	0
	A	1,661	476	0	701	332	0
	B	1,661	476	0	701	332	0
Amendment 80 sectors	Total	30,463	8,560	1,300	12,619	5,976	1,300
	A	15,231	4,280	650	6,310	2,988	650
	B	15,231	4,280	650	6,310	2,988	650
Alaska Groundfish Cooperative	Total	17,770	5,020	759	7,271	3,563	759
	A	8,885	2,510	380	3,636	1,782	380
	Critical Habitat <sup>5</sup>	n/a	251	n/a	n/a	178	n/a
	B	8,885	2,510	380	3,636	1,782	380
	Critical Habitat <sup>5</sup>	n/a	251	n/a	n/a	178	n/a
Alaska Seafood Cooperative	Total	12,693	3,540	541	5,348	2,414	541
	A	6,346	1,770	271	2,674	1,207	271
	Critical Habitat <sup>5</sup>	n/a	177	n/a	n/a	121	n/a
	B	6,346	1,770	271	2,674	1,207	271
	Critical Habitat <sup>5</sup>	n/a	177	n/a	n/a	121	n/a

<sup>1</sup> Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtraction of the CDQ reserves, jig gear allocation, and ICAs to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

<sup>2</sup> Regulations at §§ 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

<sup>3</sup> The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

<sup>4</sup> Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to November 1.

<sup>5</sup> Section 679.20(a)(8)(ii)(C) requires the TAC in area 542 shall be no more than 47% of ABC, and Atka mackerel harvests for Amendment 80 cooperatives and CDQ groups within waters 10 nm to 20 nm of Gramp Rock and Tag Island, as described Table 12 to part 679, in Area 542 are limited to no more than 10 percent of the Amendment 80 cooperative Atka mackerel allocation or 10 percent of the CDQ Atka mackerel allocation.

<sup>6</sup> Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtraction of the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.



Pursuant to § 679.20(a)(7), Table 5b of the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012) is revised for the 2013 gear shares and seasonal allowances of the BSAI Pacific cod TAC consistent with this adjustment.

TABLE 5b—FINAL 2013 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]					
Gear sector	Percent	share of gear sector total	share of sector total	seasonal apportionment <sup>2</sup>	
				Dates	Amount
Total TAC	100	260,000	n/a	n/a	n/a
CDQ	10.7	27,820	n/a	see § 679.20(a)(7)(i)(B)	n/a
Total hook-and-line/pot gear	60.8	141,165	n/a	n/a	n/a
Hook-and-line/pot ICA <sup>1</sup>	n/a	500	n/a	see § 679.20(a)(7)(ii)(B)	n/a
Hook-and-line/pot sub-total	n/a	140,665	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	112,671	Jan 1-Jun 10	57,462
				Jun 10-Dec 31	55,209
Hook-and-line catcher vessel ≥ 60 ft LOA	0.2	n/a	463	Jan 1-Jun 10	236
				Jun 10-Dec 31	227
Pot catcher/processor	1.5	n/a	3,470	Jan 1-Jun 10	1,770
				Sept 1-Dec 31	1,700
Pot catcher vessel ≥ 60 ft LOA	8.4	n/a	19,434	Jan 1-Jun 10	9,911
				Sept 1-Dec 31	9,523
Catcher vessel < 60 ft LOA using hook-and-line or pot gear	2	n/a	4,627	n/a	n/a
Trawl catcher vessel	22.1	51,312	n/a	Jan 20-Apr 1	37,971
				Apr 1-Jun 10	5,644
				Jun 10-Nov 1	7,697
AFA trawl catcher/processor	2.3	5,340	n/a	Jan 20-Apr 1	4,005
				Apr 1- Jun 10	1,335
				Jun 10-Nov 1	0
Amendment 80	13.4	31,112	n/a	Jan 20-Apr 1	23,334
				Apr 1- Jun 10	7,778
				Jun 10-Nov 1	0
Amendment 80 limited access <sup>2</sup>	n/a	n/a	5,793	Jan 20-Apr 1	4,345
				Apr 1- Jun 10	1,448
				Jun 10-Nov 1	0
Amendment 80 cooperatives <sup>2</sup>	n/a	n/a	25,319	Jan 20-Apr 1	18,989
				Apr 1- Jun 10	6,330
				Jun 10-Nov 1	0
Jig	1.4	3,251	n/a	Jan 1-Apr 30	1,950
				Apr 30-Aug 31	650
				Aug 31-Dec 31	650

<sup>1</sup> The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 500 mt based on anticipated incidental catch in these fisheries.

<sup>2</sup>The 2013 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known November 1, 2012, the date by which the applicants eligible to apply for participation in the Amendment 80 program must file their application.

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the appropriate allocations for pollock, Atka mackerel, and Pacific cod in the BSAI based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 26, 2012, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 et seq.

Dated: December 28, 2012

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Lindsay Fullenkamp,  
Acting Deputy Director,  
Office of Sustainable Fisheries,  
National Marine Fisheries Service.

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